Supreme Court, U.S.
FILED
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No.06-37

IN THE

SUPREME COURT OF THE UNITED STATES

Elizabeth A. Kalil,

Petitioner *pro se*,

v.

United States Department of Justice, *et. al.*,

Respondents.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Second Circuit

PETITION FOR REHEARING

Elizabeth A. Kalil
Petitioner, *pro se*
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On October 2, 2006, this Court denied petitions for certiorari in over 1,850 cases, including the instant matter which was filed on July 5, 2006. Simultaneously, and on this October 2nd, this Court granted certiorari to two petitions[1] by vacating said judgments and remanding to the appropriate circuit for further consideration in light of this Court's ruling in *Burlington Northern & Santa Fe Railway v. White*, 548 U.S. ____ (2006) (hereinafter referred to as "*Burlington*").

The intervening circumstances of a substantial or controlling effect not previously presented are the *Burlington* ruling of June 22, 2006 and the absence of both public agency Respondent and public agency Intervenor, both of whom chose not to defend the Second Circuit's affirmation of agency actions in excess of statutory authority or to challenge, oppose, refute, and/or dispute any of the law or facts presented by Petitioner in her Petition for Writ of Certiorari. Resultant consequences of the absence of *Burlington*, Respondent, and Intervenor trample Petitioner's Constitutional rights of due process, stigmatize her good name and thwart public policy by turning 8 USC 1324b and its prohibition of intimidation or retaliation provision (8 USC 1324b(5)) on its head.

Specifically:

1. The United States Solicitor General's Office on behalf of Respondent the United States Department of Justice, *et. al.*, submitted a waiver dated July 24, 2006, despite its duty to represent the United States' interests, including the interests of its citizens in their Constitutional guarantees and federal statutory protections.

[1] 05-1051 *Bussell, Meghan v. Motorola, Inc., et. al.*
06-81 *James, Maralyn S. v. Metro. Govt. of Nashville, TN*

2. The law firm of Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C., ("Ferrara Firm") alleged to be counsel for the Intervenor, Utica City School District, submitted a waiver dated July 26, 2006 with an attached cover letter to this Court claiming two discrete arguments: (i) "*... the Petition for Certiorari has absolutely no merit and is frivolous on its face*" and (ii) "*...due to financial considerations the District will not be submitting a response to the Petition ...*" .

However, this intervening New York State public agency neglects to state it has an operating budget of approximately $150 million and that the "Ferrara Firm" has been actively litigating an adversary proceeding against Petitioner in Bankruptcy Court for the last two years by relying on the invalid actions of the regulatory agency and the Second Circuit's unsubstantiated affirmation of same, which is a non-money judgment.[2]

3. While the Office of Special Counsel For Unfair Immigration-Related Employment Practices[3] (hereinafter "OSC") issued a Memorandum of Law finding Intervenor guilty of violating federal immigration law by dint of Intervenor's School Board's knowing hire of an unauthorized alien and subordinating native born U.S. citizen Petitioner-employee to said alien, at no time has OSC prosecuted the U.S. employer and/or ever timely

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[2] Petitioner has argued same before the Bankruptcy Court, but her pleadings have been ignored. She now awaits written certification of the non-money judgment from the Second Circuit.

[3] OSC is USDOJ's Civil Rights Division investigatory and prosecutorial office.

commenced an enforcement action of the agency's final order, which, unlike that of a District Court, is not self-executing.

While Petitioner was not burdened with a money judgment by the Second Circuit, that Court nonetheless affirmed the federal regulatory agency's egregiously outrageous, libelous, conclusory statements, to which Petitioner was denied the opportunity to be heard, and in which the Second Circuit proceeded without benefit of the accurate agency record and/or findings of fact and conclusions of law.

The manifestly unjust stigmatization -- initiated by the regulatory agency's Internet publication of its final order(s) - has effectively terminated Petitioner's public school teaching career and has negatively impacted on her economic wherewithal.

Basic common sense dictates that the Second Circuit's judgment is at issue. Neither I nor my Petition should be the target of stigmatization and ongoing-retaliation. As officers of the Court, counsels have a duty to come forward and defend what they know to be right and not do a disappearing act like the Solicitor General, nor throw stones and look for money like the Intervenor (and get paid from public coffers for doing so like Intervenor's counsels), nor defer to such unlawyerly conduct as this Court has implicitly done.

Like the Second Circuit, the counselors herein practice undue deference and are oblivious to Justice Scalia's dissent in *Mead*,[4] which points to the consequences of unjust deference as applied by the Second Circuit's affirmation of excessive regulatory agency action:

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[4] *United States v. Mead Corp.* 120 S. Ct. 2164 (2001)

> ...[*Mead*] is one of the most significant opinions entered by the Court dealing with the judicial review of administrative action. **Its consequences will be enormous, and uniformly bad**. (2188) [Emphasis added].

Here, the Second Circuit's affirmation is one of illegality that implicitly condones intimidation and retaliation resulting in "enormous and uniformly bad" consequences.

Like *Burlington*, this is also a discrimination and retaliation case in which Petitioner has clearly suffered harm from both the regulatory agency and Intervenor due to her conduct of coming forward with complaints of illegal employment practices. The interfering, retaliatory conduct particularly of Intervenor over the past six years would surely deter any reasonable U.S. employee from coming forward with similar complaints.

Importantly, unlike *Burlington* which involves private rights wherein due process was afforded, the instant matter involves public rights wherein due process was denied. First, the executive regulatory agency apparently believes that U.S. public employers and unauthorized aliens (whose activities in the public domain are funded by public monies) have federal protections far in excess of any Constitutional and federal statutory rights of any U.S. citizens/public employees. Secondly, the Second Circuit's affirmation completely ignores the agency's substantive merits determination (dated December 18, 2003), the condition precedent set by the agency, yet ironically deems as without merit Petitioner's Rule 60B motion and its documentary evidence refuting the ALJ's conclusory narrative/ final published order of December 18, 2003. As a result, U.S. citizens/public employees have neither rights to due

process nor liberty interest in their good name – outcomes resulting in "enormous and uniformly bad" consequences.

Specifically, the logical inference draw from the Second Circuit's illegal affirmation is that said decision has uniformly bad consequences for public rights/policy: the agency is free to continue to disregard the prescribed procedures of mandated formal adjudication; the agency and a reviewing Circuit Court need not pay a whit to either the clear language of the controlling statute nor said statute's unambiguous Congressional intent; the agency and the reviewing Circuit Court can simply ignore the agency's substantive rules to dispose of *pro se* complainants and their discrimination and retaliation complaints.

In context of the instant matter, the coupling of denial of due process with liberty interest is tantamount to judicially approved retaliation. Importantly, the public is left in the dark as the agency and judicial review of agency actions do not play by the rules clearly expressed in the controlling statute and its Congressional intent.

WHEREFORE; based on the foregoing petitioner prays this Court will right the illegalities in this matter by issuing an order that will:

1. require the U.S. Solicitor General to fully brief the issues presented in Petitioner's Writ of Certiorari or, in the alternative, require the U.S. Solicitor General to issue a Confession of Judgment;

2. vacate and set aside the Second Circuit's unsupported Amended Summary Judgment Order dated August 4, 2005;

3. grant Petitioner's relief as requested in her Petition for Review before the Second Circuit: *de novo* review of her

national origin and citizenship status discrimination and retaliation claims; provide Petitioner with a name-clearing hearing; require the agency to immediately cease and desist from broadcasting and publishing in any way, shape or form, including over the Internet, its final defamatory, stigmatizing orders in this matter; and grant declaratory judgment in favor of Petitioner;

5. vacate and remand Petitioner's matter, including Petitioner's Rule 60 B Motion for Fraud on the Court to the United States Court of Appeals for the Second Circuit for consideration in light of *Burlington*; and

6. provide such other relief as this Court deems just and proper.

Date: October 25, 2006

Respectfully submitted:

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CERTIFICATION

I, Elizabeth A. Kalil do hereby certify that the instant Petition for Rehearing is limited to intervening circumstances of a substantial or controlling effect not previously presented; is presented in good faith and not for delay.

Elizabeth A. Kalil
Petitioner, *pro se*

Sworn and subscribed to
Before me this 25th
Day of October, 2006

Notary Public
County of: Oneida
Commission Expires: 3/15/08

JOHN A. READLING
Notary Public, State of New York
No. 02RE6106990
Qualified in Oneida County
Commission Expires March 15, 2008